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# PRACTICE GUIDELINE

## Privacy and Confidentiality



## Mandate

*Regulation for safe, competent, and ethical care.*

Under the *Nurses Act*, NANB is legally responsible to protect the public by regulating registrants of the nursing profession in New Brunswick. Regulation makes this profession, and nurses as individuals, accountable to the public for the delivery of safe, competent, and ethical nursing care.

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## Introduction

Protecting the privacy of **clients** is a fundamental responsibility of nurses<sup>1</sup>, and upholding **privacy** and **confidentiality** is important from a legal and **ethical** perspective. The following practice guideline is intended to be used as a resource for nurses in all practice settings to understand their responsibilities related to privacy and confidentiality, as well as various aspects of accessing, collecting, using, and disclosing personal health information. Appendix A includes case study examples, which provide guidance to commonly asked questions.

## Defining Privacy, Confidentiality, and Personal Health Information

*Privacy* can be either physical or informational. Physical privacy is the right or interest in controlling or limiting the access of others to oneself; informational privacy is the right of individuals to determine how, when, with whom and for what purposes any of their personal information will be shared. Clients should reasonably expect that healthcare providers who need personal health information will only share it with others who require specific information (Canadian Nurses Association [CNA], 2017).

*Confidentiality* refers to the ethical obligation to keep someone's personal health information secret or private (CNA, 2017). Nurses must keep a client's personal health information private and only share information as needed with authorized individuals or organizations.

*Personal health information* (PHI) is defined as identifying information about an individual in oral or written record (Ombud New Brunswick, n.d.). This comprises everything that an organization holds in its records about an individual, which can include for example: name, age, race, nationality, blood type, education, and identifying numbers or symbols.

*Custodian* is the term used to encompass all individuals or organizations that collect, maintain, or use PHI for the following activities: assisting in or providing health care or treatment; planning or management of health care systems; and delivering a government program or service (Ombud New Brunswick, n.d.). They are responsible for ensuring PHI is safeguarded, accessed, collected, used, and disclosed in accordance with legislation. Nurses are responsible for knowing whether they are a custodian or an agent for the custodian; further information is found below on page six.

## Nurses' Responsibilities for Privacy and Confidentiality

There are several provisions related to the nurse's legal and ethical obligation on collection, use, maintenance, disclosure, and safeguarding of PHI. Legislation, standards of practice, and the code of ethics all speak to privacy and confidentiality.

Federal and provincial legislation uphold and protect a person's right to privacy and confidentiality regarding PHI. The specific legislation that applies to an individual nurse's practice is dependent upon their

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<sup>1</sup> For the purposes of this document, the term "nurse" refers to graduate nurses, registered nurses, and nurse practitioners.

work setting. It is the responsibility of each nurse to know which legislation applies to their practice and to follow legislated requirements.

In New Brunswick, the [Personal Health Information Privacy and Access Act](#) (PHIPAA) provides a set of rules that protects PHI. PHIPAA applies to health care providers, referred to as custodians, in both public and private health care sectors in N.B. and regulates how custodians collect, use, disclose, retain and securely destroy PHI. For additional information, please review the [New Brunswick Ombud's Office General Information](#).

Federally, the [Privacy Act](#) is the law that determines privacy rights within federal government institutions. The *Privacy Act* provides a set of rules that protect personal information and determine how personal information is collected, used, disclosed, retained, and disposed. The *Privacy Act* also gives individuals the right to access their personal information held by the federal government.

The *Privacy Act* only applies to federal government institutions, such as the Department of Veterans Affairs, Correctional Service of Canada, and the Public Health Agency of Canada. For a full list of Institutions, please review [Privacy Act Schedule of Institutions](#). For more information on both PHIPAA and the *Privacy Act*, please review NANB's [Jurisprudence Guide](#).

[The Code of Conduct for Registered Nurses and Nurse Practitioners](#) also outlines accountabilities for nurses in relation to privacy and confidentiality. These provisions can be found within the following documents: the [Code of Conduct for Registered Nurses and Nurse Practitioners](#), [Standards for the Nurse-Client Relationship](#), and the [Standards for Documentation](#).

Finally, it is the responsibility of each nurse to review and understand employer policies related to privacy and confidentiality. If a nurse is self-employed, they are often considered the legal custodian of the health information of their clients (Canadian Nurses Protective Society [CNPS], 2021a). It is important to review the [Guideline for Self-Employed Practice](#) to understand additional responsibilities for privacy and confidentiality as a self-employed nurse.

## Access, Collection, and Use of Personal Health Information

When nurses access, collect, or use PHI, they must:

- access, collect, or use PHI only for reasons that meet their professional responsibilities and/or legislated requirements;
- only access PHI that relates directly to and is necessary for the healthcare service, program, or activity;
- only collect the health information that is reasonably necessary to meet the client's healthcare needs;
- only use the PHI for the purpose for which it was collected unless the client consents that it can be used for another purpose; and
- confirm that the client or substitute decision maker has consented to the collection, use, and disclosure of PHI. Please refer to the [Fact Sheet: Consent](#) for further information on **consent**.

It is important to note that clients have the right to access their own PHI. A client may request their PHI orally or in written form. It is important to be familiar with employer policy related to client access of PHI and follow the correct process as outlined by the employer. The [New Brunswick Ombud's Office](#) provides additional information around accessing PHI.

Nurses do not have the right to review their own PHI through work-related access. Although an individual owns the PHI within a health record, it is the custodian who owns the actual record and is responsible for safeguarding this information (CNPS, 2018). The custodian is the institution or health authority, whereas the employed nurse is considered the custodian's agent. Agents are legally recognized as someone who can collect, use, and disclose PHI on behalf of the custodian and this information is directly related to their employment duties (CNPS, 2018). Accordingly, nurses wishing to access their own PHI may only do so with the same process as clients wishing to access their own records.

## Disclosure and Sharing of Personal Health Information

When a nurse shares PHI, they must ensure that:

- every disclosure is limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed; and
- only share PHI on a reasonable, need-to-know basis with other members of the healthcare team.

Other healthcare professionals not directly involved in a client's care may be required to access PHI for activities such as supporting practice, educational opportunities, or quality assurance (CNPS, 2021b). According to the [Code of Conduct](#), nurses share and disclose clients' personal health information for therapeutic reasons only as necessary, and refrain from sharing any details that could inadvertently identify clients. Nurses should consider if there is authorized consent from the client and follow employer policy related to sharing PHI.

There are few exceptions when disclosure of PHI without consent is necessary. Examples include public health legislation, child protection legislation, mental health legislation, other mandatory reporting legislation, or when the nurse reasonably believes sharing information is necessary to prevent the risk of serious harm to an individual to whom the information relates. It is important to understand employer policy related to disclosure of PHI without consent and to first consult with the employer's privacy officer to follow correct processes related to these exceptional circumstances. Furthermore, when the duty to disclose is unclear, it is important to contact the employer, privacy officer, nurse regulator, or legal advisor such as CNPS, for additional guidance and information (CNPS, 2021b).

### Are you a custodian or an agent for the custodian?

Nurses who use PHI within organizations, such as regional health authorities, nursing homes, or public bodies that handle PHI are agents for the custodian. They have authorities and responsibilities around PHI, but do not have the same rights and responsibilities of the custodian (CNPS, 2017).

Nurses may be the custodian if they are:

- self-employed;
- employed by an organization that does not normally provide healthcare; or
- employed by a private entity not owned or operated by a healthcare professional (CNPS, 2017).

### Additional Information

[Are you a custodian or trustee of health records? \(CNPS\)](#)  
[Guidelines for Custodians \(GNB\)](#)  
[Q&A for Custodians about the PHIPAA \(GNB\)](#)  
[Important Facts for Custodians \(GNB\)](#)

## Safeguarding Personal Health Information

Custodians are responsible for protecting PHI by adopting information practices that include reasonable administrative, technical, and physical safeguards that ensure the confidentiality, security, accuracy, and integrity of the information. It is important for nurses to understand employer policies related to safeguarding physical and electronic health records and to follow employer policy.

Custodians are additionally responsible to implement additional safeguards for the security and protection of electronic PHI. This may include cybersecurity measures, such as continuing education for staff to understand phishing emails or secured cell phone apps for encrypted text messaging. Nurses should be familiar with additional cybersecurity measures set forth by the employer. Nurses are also advised to only use personal devices with their employer's consent and send communications on the organization's secured networks (CNPS, 2014). Nurses who are self-employed are responsible for reviewing and understanding best practices related to safeguarding of PHI and implement these into their self-employed practice.

## Breaches in Privacy

A breach in privacy happens when PHI of a client is shared to a third party without their consent. Breaches may be intentional or unintentional. They can include, but are not limited to:

- sharing information about a client to others who are not a part of the healthcare team;
- accessing, collecting, or using information for purposes that are inconsistent with their professional obligations;
- accessing client records when the nurse is not a part of the healthcare team;
- mishandling photos or videos of clients receiving care; and
- misdirecting information to the wrong fax or email address.

There are multiple possible consequences related to the unauthorized access, collection, use, or disclosure of PHI:

- a client may pursue legal action against a nurse for breach of confidentiality or privacy;
- NANB may investigate a complaint and institute disciplinary proceedings;
- the employer may launch an investigation and disciplinary action;
- the New Brunswick Ombud's Office may investigate a complaint;
- negative impact on the nurse-client relationship; and
- increased stress or embarrassment for the client.

## Maintaining Privacy and Confidentiality

Nurses have the responsibility to maintain the privacy of their clients and uphold confidentiality. Clients expect that nurses will maintain their legal and professional obligations at all times. There are many ways that nurses can ensure they are maintaining privacy and confidentiality, which include:

- placing the client's privacy first when making any decisions about access, collection, use, or disclosure of PHI;
- if a situation is unclear, erring on the side of caution and reaching out to their employer's privacy officer, The New Brunswick Ombud's Office, or their nurse regulator;
- following employer policy and advocating for the development of policies as needed;
- never discussing confidential information in public areas; and
- never attempting to gain access to PHI outside of employment duties. This includes reviewing records out of curiosity, or searching the health information of friends, family members, or their own information.

## Conclusion

Upholding the principles of privacy and confidentiality are fundamental to nursing practice. Protecting a client's PHI contributes to safe, compassionate, competent, and ethical nursing care. It is essential for nurses to understand their legal and ethical obligations related to privacy and confidentiality, including access, use, collection, and disclosure of PHI. Furthermore, nurses are expected to safeguard PHI and maintain privacy and confidentiality, and understand the risks associated with breaches in privacy.

For additional information or further guidance on privacy and confidentiality, please contact NANB by email at [practiceconsultation@nanb.nb.ca](mailto:practiceconsultation@nanb.nb.ca)



## Glossary

**Clients** Individuals, families, groups, populations, or entire communities who require nursing expertise. The term “client” reflects the range of individuals and/or groups with whom nurses may be interacting. In some settings, other terms may be used such as patient or resident. In education, the client may also be a student; in administration, the client may also be an employee; and in research, the client is usually a subject or participant (NANB, 2018).

**Confidentiality** The ethical obligation to keep someone’s personal and private information secret or private (CNA, 2017).

**Consent** is the voluntary agreement to some act or purpose made by a capable individual. Clients and their substitute decision makers have the legal right to agree to, refuse or revoke permission for proposed care, service, treatment, or research provided by a health care professional, at anytime (BCCNM, 2020).

**Ethics:** a branch of philosophy that deals with questions of right and wrong and of ought and ought not in our interactions with others (CNA, 2017).

**Privacy:** (1) Physical privacy is the right or interest in controlling or limiting the access of others to oneself; (2) informational privacy is the right of individuals to determine how, when, with whom and for what purposes any of their personal information will be shared. A person has a reasonable expectation of privacy in the health-care system so that health-care providers who need their information will share it only with those who require specific information (CNA, 2017).

## References

- Canadian Nurses Association. (2017). *Code of Ethics for Registered Nurses*. <https://www.cna-aiic.ca/en/nursing/regulated-nursing-in-canada/nursing-ethics>
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## Appendix A: Case Study Questions

### 1. Using information

Amit is a nurse practitioner who specializes in wound care. He had previously taken photos with consent of a third degree burn that had impacted the client's scalp and neck. The photos were taken to monitor the progress of wound healing. Amit has been asked to present at a conference on treatment of burns and has determined that the photos were previously consented to be taken and therefore uses them in his presentation. Is this okay?

It is important to understand that PHI, including photos, must be limited to the use for which it was collected. The client originally consented to the photos being kept in the medical record for purposes related to monitoring of wound progress. Although the photos may be beneficial for teaching and learning purposes, Amit would require the consent of the client to use the photos in a manner that differs from the reason they were originally collected and used.

It is also prudent for Amit to review employer policy related to using PHI for educational purposes and ensure that he is following the correct procedures as outlined by the employer.

### 2. Sharing information

A police officer, who is well known to the small-town emergency department, has asked the attending nurse for an update on a patient they had assisted to the ED for a mental health crisis. Is it okay to share information?

Although it may be tempting to discuss patient care with a friendly or concerned individual, it is important to remember that disclosure of PHI outside of the healthcare team can only happen when the patient provides consent or if there is a legal obligation to do so.

Law enforcement may become involved at times when they are carrying out an inspection, investigation, or similar procedure that is authorized under legislation; however, that is not the case here. It is important for nurses to understand employer policy related to disclosure of PHI and contact the employer's privacy officer if policy or process is unclear.

### 3. Accessing Information

Mark, a new graduate nurse on a medical unit, has heard that there is a newly admitted patient with botulism. They have only ever heard of botulism and are curious how this patient is being treated. Although they are uninvolved in this patient's care, Mark decides to look up the patient's medical records and read through their chart for educational purposes. Is this an acceptable practice?

Accessing information out of curiosity is considered a breach of privacy and confidentiality. Nurses are required to only access PHI that relates directly to and is necessary for the healthcare service. Mark does not have access to this PHI because they are not assigned to the patient's care.

There may be circumstances in practice when nurses not directly involved in care may access PHI for purposes such as supporting practice or continuing education. In such cases, the patient needs to provide consent to access this PHI. Nurses should be aware of employer policy related to PHI for educational or practice support purposes. Nurses may also contact their employer's privacy officer to ensure they are following the correct protocols.

There are other ways that Mark can learn about botulism while still ensuring they are not breaching the privacy of the client. They can research the topic, review best practice and evidence-informed guidelines, or ask questions about botulism to experts in bacterial illnesses.

#### **4. Texting**

Jennifer is a registered nurse working in an emergency department. The attending physician has asked Jennifer to send text updates using her personal phone as test results become available. Is this an acceptable practice?

Texting is an efficient way to communicate. However, using a personal device to send and receive health information may result in unauthorized disclosure or inappropriate access if the device is lost, stolen, or viewed by someone uninvolved in the healthcare delivery. Additionally, traditional text messaging does not allow any way to keep the original message in a health record and cannot guarantee to whom and when a message was delivered.

Nurses should determine if their employer has implemented secured text messaging networks in which the physician and nurse can send and receive patient information. Nurses are also advised to only use personal devices with their employer's consent and send communications on the organization's secured networks.

*The Canadian Nurses Protective Society (CNPS) granted permission to adopt content from [Ask a lawyer: Texting updates to other health professionals](#)*

#### **5. Independent practice**

Lucy is working toward opening their own cosmetic nursing practice. The location they have rented does not include locked cabinets, but the rental unit does have locks. Lucy has decided that this is sufficient to keep their physical charts safe. Is this a reasonable safeguard?

Nurses in private practice are typically considered the legal custodians of PHI. As such, nurses who are opening an independent practice must ensure that they collect, use, disclose, and safeguard PHI following applicable privacy legislation as a custodian.

Physical or electronic security safeguards are intended to protect information against loss, theft, or unauthorized access, disclosure, copying, or use. Custodians are expected to protect PHI by adopting reasonable safeguards to protect these health records.

Lucy is expected to implement reasonable safeguards, including physical safeguards such as locks, to protect from loss, theft, or unauthorized access. Depending on the situation, a landlord, maintenance workers, or cleaning staff may have access to the rented space and would therefore

have easy access to unprotected physical charts. In this case, it would be judicious for Lucy, as the custodian, to research best practices related to physical safeguarding of PHI and implement these practices into their work location.

## **6. Working remotely**

Jordan is a nurse administrator who has a hybrid work schedule. Due to this hybrid schedule, she takes the laptop from her employer between her work and home offices. Are there additional privacy factors that Jordan must take into consideration?

Safeguards to protect personal health information may be physical, administrative, or technological in nature. Physical safeguards may include locks or ensuring a laptop is never left unattended during transport. Administrative safeguards may include restricted access to PHI that is on a “need to know” basis. Technological safeguards may include use of passwords, encryptions, and secured networks.

From a physical standpoint, Jordan should ensure she moves her laptop between offices in a way that would reasonably prevent loss or theft of the computer. From an administrative standpoint, the employer/custodian should consider the extent of PHI that Jordan can or should have access to as a nurse administrator. Finally, from a technological standpoint, Jordan should consider cybersecurity measures in place, such as encryptions and secured networks to perform her work duties.

It is important for Jordan to understand employer policy related to hybrid work, and to follow any processes that are physical, administrative, or technological in nature to prevent the risk of breaches in privacy.



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165 Regent Street  
Fredericton, NB, E3B 7B4  
[www.nanb.nb.ca](http://www.nanb.nb.ca)